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HMJ SHAHAROM & KS WEE

v.

KUMPULAN WANG AMANAH PENCEN

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HIGH COURT MALAYA, KUALA LUMPUR
HAMID SULTAN ABU BACKER J
[SUIT NO: S5-21-203-2006]
21 DECEMBER 2012

C ***LEGAL PROFESSION:*** *Remuneration - Professional fees - Vetting of draft agreement - Professional fees for sum of RM1,346,625 - Failure to settle full payment of fees - Whether sum claimed was reasonable - Whether there existed fees agreement - Whether claim for work done exceeded scope of instruction - Whether RM70,000 a reasonable sum*

D The plaintiff, a law firm, was appointed by the defendant to vet a draft agreement. The plaintiff then wrote to the defendant, *inter alia*, with its comments and enclosed various documents. The plaintiff had also forwarded their revised professional fees for the sum of RM1,346,625 to the defendant. There was an exchange E of correspondence thereafter and the plaintiff forwarded their gross bill to the defendant. However, the defendant tendered a cheque for RM70,000 as full payment but the plaintiff returned it back and insisted on full payment of their bill. Dissatisfied that the defendant did not settle the full payment of their fees, the plaintiff F thus filed the present action to recover the amount claimed. The issue that arose for consideration herein was whether the plaintiff's professional fees for the sum of RM1,346,625 was reasonable under the Sixth Schedule of the Solicitors' Remuneration Order 2005.

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Held (dismissing claim with costs):

(1) The Legal Profession Act 1976 ('LPA 1976') sets out a methodology as to how a bill of costs ought to be dealt with when there is dispute. Failure to adhere to the strict H provisions of the LPA 1976 will be fatal to the solicitor or his client. (para 3)

(2) Section 121(1) of the LPA 1976, which relates to contentious matter and also to non-contentious matter by virtue of s. 113(6) of the LPA 1976, does not permit the plaintiff to I succeed on a gross bill when a detailed bill has been requested

by the defendant immediately upon service of the writ or within three months from the date of delivery of the gross bill. (para 8)

(3) The plaintiff did not have a fees agreement with the defendant and was not able to justify the work done. The plaintiff's evidence was not convincing and lacked the professional standard accepted by the profession. The claim for work done exceeded the scope of instruction and the plaintiff had conceded that the firm had no expertise in the scope of work instructed. Taking into consideration the objective of the defendant was only to vet the agreement, it could have been done for a nominal fee and also within a short time frame by solicitors who had the expertise in that particular field. (para 12)

(4) After having considered the evidence adduced as to the issue of reasonableness with reference to quantum and the submission of the parties and the factual matrix of the case, a sum of RM70,000 fees offered by the defendant was reasonable. (para 12)

Obiter

(1) In the case of *Templer Park Golf & Resort Bhd & Anor v. Tetuan George Varughese* it was stated that 'solicitors are a protected species' under the LPA 1976 in relation to fees, provided they follow the provisions of the Act. This will not be the case for long because of the Competition Act 2010 which was framed to protect consumer. The protection for clients under the LPA 1976 was not realistic taking into consideration that short time frame is given such as one month for clients to take steps to object to the bill. In addition, there are too many provisions in the LPA 1976 for an unscrupulous solicitor to raise unreasonable or excessive bill and justify based on circuitous logic to sustain the bill to the disadvantage of the client, public's purse and judicial time. There is also no provision for compulsory 'fee agreement' on formal basis to eliminate dispute. The Bar Council has a duty and obligation to equally protect client's interest. It is time all the stakeholders under the LPA 1976 namely, the Judiciary, the Attorney General's Chambers, the Bar Council and also the Commission under the Competition Act 2010 move to amend the LPA 1976. (para 14)

Case(s) referred to:

Adi Radlan & Co v. Create Fortune Enterprise Sdn Bhd [2010] 4 CLJ 225 HC ***(dist)***

Alex Ting Kuang Kuo v. Credit Corporation (M) Sdn Bhd [2012] 9 CLJ 352 HC ***(refd)***

Harrison and Others v. Tew [1990] 1 All ER 321 ***(dist)***

John Ang & Jega v. Kulasingam Sinatamby [2001] 2 CLJ 198 HC ***(dist)***

Kumpulan Wang Amanah Pencen v. HMJ Shaharom & KS Wee [2012] 9 CLJ 320 CA ***(refd)***

Templer Park Golf & Resort Bhd & Anor v. Tetuan George Varughese [2010] 8 CLJ 754 HC ***(dist)***

Tetuan Jaffar & Menon v. Senandung Kualiti Sdn Bhd & Anor [2005] 1 CLJ 234 HC ***(refd)***

Vije & Co v. The Co-operative Central Bank Ltd [1991] 2 CLJ 1403; [1991] 4 CLJ (Rep) 188 HC ***(dist)***

Wee Choo Chin v. Billion Mayor Asia Sdn Bhd (Unreported) ***(dist)***

Legislation referred to:

Legal Profession Act 1976, ss. 113(6), 121(1)(a), 124(1)

For the plaintiff - Muralee YS Menon; M/s Jaffar & Menon
For the defendant - Porres Royan; M/s Shook Lin & Bok

Reported by Thirunavakarasu Vijayan

JUDGMENT

Hamid Sultan Abu Backer J:

[1] This is my judgment in respect of the plaintiff's claim for fee relating to a bill of costs as solicitors for work done only to 'vet a draft agreement' as opposed to preparing a draft agreement and being the solicitors of the client to complete the execution and in that process to liase with solicitors of other party. The plaintiff's attempt for summary judgment was not successful as the Court of Appeal had set aside the decision of the High Court granting summary judgment in favour of the plaintiff and had granted the defendant unconditional leave to defend (see *Kumpulan Wang Amanah Pencen v. HMJ Shaharom & KS Wee* [2012] 9 CLJ 320).

[2] The plaintiff asserts that the only issue before this court is whether the sum of RM1,346,625 billed by the plaintiff under Bill No: HM/W/098/96 is reasonable under the Sixth Schedule of the Solicitors' Remuneration Order 2005 ('SRO 2005'). However, learned counsel for the defendant has raised a number of issues of law pursuant to the Legal Profession Act 1976 ('LPA 1976')

to negate liability as well as quantum as claimed by the plaintiff. Both parties have filed detailed submissions which are found in encls. 70, 71, 72 and 73. The statement of agreed facts reads as follows:

1. The plaintiff is a law firm while Kumpulan Wang Amanah Pencen (KWAP) is a corporation established by law.

2. The plaintiff was appointed by KWAP to vet a draft agreement entitled 'Amended and Restated Exempted Limited Partnership Agreement of Lombard Asia III L.P.'

3. By a letter dated 1.09.2005, the plaintiff wrote to KWAP, *inter alia*, with comments and also enclosed certain documents.

4. On 5.09.2005, there was a meeting at KWAP's offices between the respective representatives of the plaintiff and KWAP.

5. By e-mail dated 13.09.2005, the plaintiff was requested by KWAP to go through the revised version of the agreement and send their comments by 23.09.2005.

6. By letter dated 22.09.2005, the plaintiff wrote to KWAP, *inter alia*, with comments and enclosed various documents. The plaintiff also informed KWAP that their legal fees inclusive of consultancy research professional fees was 1.5% of KWAP's total commitment (USD$30 Million equivalent to RM114 Million) to the partnership.

7. By letter dated 2.12.2005, KWAP requested the plaintiff to review their proposed fees.

8. By letter dated 6.12.2005, the plaintiff stated *inter alia* that their fees were based on international norms, that their revised fees was less by 25% quoted in KWAP's letter and that their professional fees was now RM1,346,625 (inclusive of 5% GST of RM64,125).

9. There was an exchange of correspondence thereafter and under cover of letter dated 27.06.2006 the plaintiff forwarded their gross sum Bill No. HMJ/W/098/06 dated 27.06.2006 to KWAP.

10. KWAP's tender of a cheque for RM70,000 as full payment was returned by the plaintiff who insisted on full payment as per their bill.

11. On 22.08.2006, the plaintiff filed the writ herein.

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12. By letter dated 12.09.2006, the defendant's solicitors wrote to the plaintiff's solicitors requesting a detailed bill of costs.

13. On 22.09.2006, the plaintiff served the writ herein on the defendant.

B **[3]** At the outset it must be said that whether it is contentious or non-contentious matter, the LPA 1976 sets out a methodology as to how a bill of costs ought to be dealt with when there is dispute. Failure to adhere to the strict provisions of the LPA 1976 will be fatal to the solicitor or his client.

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Brief Facts

[4] In the instant case, the writ was issued on 22 August 2006. The statement of claim is very economical and, *inter alia*, reads as follows:

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3. Plaintif menuntut terhadap Defendan untuk amaun sebanyak RM1,346,625 (termasuk 5% GST sebanyak RM64,125) untuk yuran guaman professional bagi perkhidmatan yang dibekalkan atas permintaan Defendan. Butir-butir penuh adalah dalam pengetahuan Defendan.

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4. Defendan (Should be Plaintif) telah melalui peguamcaranya iaitu Tetuan Jaffar & Menon pada 31.07.2006 menuntut daripada Defendan amaun RM1,346,625 tersebut akan tetapi Defendan masih gagal, cuai atau enggan membayar amaun tersebut atau sebahagian darinya.

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5. Oleh itu, Plaintif menuntut terhadap Defendan:

(a) jumlah sebanyak RM1,346,625;

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(b) Faedah pada kadar 8% dari tarikh pemfailan Saman ini ke atas jumlah sebanyak RM1,346,625 sehingga penjelasan.

(c) Kos pada kadar peguam-anakguam.

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(d) Apa-apa relif lain yang Mahkamah Yang Mulia berpendapat adalah patut dan perlu.

[5] Learned counsel for the defendant, in encl. 71, complains:

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8. ... It must immediately be noted that there is no mention whatsoever in the Statement of Claim of the Bill No. HMJ/W/098/06 dated 27.06.2006 ("the said Bill"). This is a serious pleading omission because, section 124(1) of the Legal Profession Act, 1976 ("the Act") specifically provides

that an advocate & solicitor cannot commence or maintain, without leave of the court, any action for the recovery of any costs due for any business done by him until the expiration of one month after he has delivered the party to be charged with a bill of costs.

9. The critical point is that: (i) the action by an advocate and solicitor for the recovery of costs due for any business done by him must be based or founded on a bill of costs delivered to the party to be charged therewith; (ii) the action can only be commenced one month after the bill has been delivered.

Though the action herein was only commenced on 22.08.2006, more than one month after the said Bill was delivered to KWAP, there is no averment in the Statement of Claim that the action is based or founded on the said Bill.

[6] The complaint is not without merit. The instant case has a chequered history and the defendant had at all material time objected to the bill. Once the writ was issued and served, the defendant had filed an originating petition in the High Court for the defendant to deliver the detailed bill. Before the petition could be heard, the plaintiff had obtained a summary judgment in the High Court before Zabariah Yusof JC (as Her Lady then was) and instantly proceeded to strike out the petition and in fact, it was struck out by Justice Mohd Zawawi bin Salleh J on the principal ground that the petition has become academic in consequence of the summary judgment.

[7] The defendant had appealed on the striking out of the petition as well as the summary judgment. Both the appeals came up for hearing and the defendant succeeded in the appeal against the summary judgment and on own volition, withdrew the appeal against the striking out of the petition. The tacit withdrawal of the defendant of his petition does not affect the defendant's right on the factual matrix in consequence of s. 121 of the LPA 1976 which I shall adumbrate in this judgment.

[8] What is important to note here is that s. 121(1) of the LPA 1976, which relates to contentious matter and also to non-contentious matter by virtue of s. 113(6) of the LPA 1976, does not permit the plaintiff to succeed on a gross bill when a detailed bill has been requested by the defendant immediately upon service

of the writ or within three months from the date of delivery of the gross bill. It is not in dispute here that it is a gross bill and the defendant has requested the detailed bill. Section 121(1) of the LPA 1976 reads as follows:

> (1) Where the remuneration of an advocate and solicitor in respect of contentious business done by him is not the subject of an agreement made pursuant to section 116, the solicitor's bill of costs may at the option of the advocate and solicitor either contain detailed items or be for a gross sum:
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> Provided that:
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> (a) at any time before service upon him of a writ or other originating process for the recovery of costs included in a gross sum bill and before the expiration of three months from the date of the delivery to him of the bill, the party chargeable therewith may require the advocate and solicitor to deliver to him *in lieu* of the cost a bill containing detailed items, and the gross sum bill shall thereupon be of no effect;
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> (b) where an action is commenced on a gross sum bill, the Court shall, if so requested by the party chargeable therewith before the expiration of one month from the service on that party of the writ or other originating process, order that the bill shall be taxed;
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> (c) if a gross sum bill is referred to taxation, whether under this section or otherwise, nothing in this section shall prejudice any rules of court with respect to taxation and the advocate and solicitor shall furnish the taxing officer with such details of any of the costs covered by the bill as the taxing officer may require.

[9] It must be noted that even though s. 121(1) relates to contentious matters, the said section is equally made applicable to non-contentious matters too. This is so because of s. 113(6) which also appears in the Part VIII of the LPA 1976 under the heading "Remuneration of Advocates and Solicitors" which states that:

> So long as an order made under this section is in operation, taxation of bills of costs of advocates and solicitors in respect of non-contentious business, shall subject to section 121, be regulated by that Order.

[10] In *Tetuan Jaffar & Menon v. Senandung Kualiti Sdn Bhd & Anor* [2005] 1 CLJ 234, the learned judge considered the joint effect of s. 121 and s. 113(6) and concluded that s. 121 also governs taxation of non-contentious business:

> Having considered these propositions, I am of the view that the phase "subject to s. 121" in s. 113(6) LPA permits the 1st Defendant to apply for taxation of the bill of cost under s. 121(1)(b) LPA on non-contentious business ascribed under s. 113 LPA. Though s. 121 LPA governs taxation of a bill of cost concerning matters that are contentious and s. 113 LPA relates to non-contentious business but with the includes of the phase "subject to" in s. 113(6) LPA it means that taxation of non-contentious business ascribed by the order of the Solicitors Costs Committee under s. 113 LPA must be subjected to another provision or procedural limitation for implementation. And the selected provision to facilitate this is s. 121 LPA. This means that for remedy to recover remuneration ascribed by the Solicitors Cost Committee is conditional upon the application of s. 121 LPA.

[11] Learned counsel for the defendant on this issue submits as follows:

(a) the Plaintiff's said Bill was for a gross sum as agreed by the parties in AF para 9;

(b) the Plaintiff's Writ herein was for the recovery of costs included in a gross sum bill;

(c) before the service of the Writ on KWAP on 22.09.2007 (B 386) and before the expiration of 3 months from the date of delivery to KWAP of the Plaintiff's bill, KWAP (i.e. the party chargeable therewith) by its solicitors had required the Plaintiff (B 383-4) to deliver to KWAP a detailed bill of costs;

(d) the Plaintiff failed to deliver to KWAP a detailed bill of costs as required;

(e) in the circumstances, by virtue of s. 121(1)(a), the Plaintiff's gross sum bill dated 22.06.2006 was "of no effect" from 12.09.2006 and the suit herein could not be commenced and thus ought to be dismissed.

(f) it is trite law that in the interpretation of statutes, the courts always presume that Parliament inserted every part for a purpose and the legislative intention is that every part of the statute should have effect. In other words, a statute ought to be construed so that no clause, sentence or work should be superfluous, void or insignificant.

A (g) the words "the gross sum bill shall thereupon be of no effect" mean what they say. The word "thereupon" means upon the happening of the event, namely, the client's request to the advocate & solicitor for a bill containing detailed items.

B (h) the words "no effect" means the gross sum bill has no validity or cannot be relied upon.

(i) if the said Bill was of no effect from 12.09.2006, that would mean that the said Bill could not be the basis or foundation of an action to recover any costs for business done by the C Plaintiff.

(j) in the premises, by virtue of and pursuant to s. 124(1) of the Act, the action herein could not be commenced because the said Bill had no effect.

D (k) the action herein ought therefore to be dismissed on this ground alone.

[12] I must say here the defendant's argument that the action cannot be commenced is not totally correct but I will agree that E the action will not succeed. After having given much consideration to the plaintiff's submission on this issue, I am in total agreement with the defendant's counsel that the plaintiff's action must be dismissed *in limine*. Even if I were wrong on the issue of liability, after having considered the evidence adduced as to the issue of F reasonableness with reference to quantum and the submission of the parties and the factual matrix of the case, I am in total agreement with the learned counsel for the defendant that a sum of RM70,000 fees offered by the defendant is reasonable. My reasons, *inter alia*, are as follows:

G (a) In the instant case, one witness gave evidence for the plaintiff and one for the defendant. The evidence of the defendant's witness was consistent with the contemporary documents and despite severe cross-examination by learned counsel for the H plaintiff was not shaken or discredited. In my view, the defendant's witness was forthright and honest. I cannot say the same for the plaintiff's witness, Wee Kim Seng, who was a solicitor, and in law has a duty to the court as well as his client to be forthright, honest and candid. Learned counsel for I the defendant launched a detailed cross-examination to discredit the plaintiff's witness and, *inter alia*, it is my finding that the plaintiff has no fees agreement with the defendant. The plaintiff has raised a bill and was not able to justify the

work done. The plaintiff's evidence was not convincing and lacks the professional standard expected by the profession. The claim for work done exceeded the scope of instruction and the plaintiff has conceded that the firm has no expertise in the scope of work instructed. Taking into consideration the objective of the defendant was only to 'vet' the agreement, in my view it could have been done for a nominal fees and also within a short time frame by solicitors who have expertise in that particular field. In this respect, the submission of learned counsel for the defendant has merits, and in particular paras. 26 and 27 which read as follows:

26. In our respectful submission, the Plaintiff was only instructed to vet the clauses of the draft agreement and give their comments and/or advice on the legal aspects only. The Plaintiff's actual scope of work was addressed by KWAP in its letter dated 29.03.2006 (B369-370) and this was what KWAP said:

> Sehubungan itu, merujuk kepada perbincangan pertama di antara KWAP dan firma tuan pada 9 Ogos 2005 dan disusuli dengan surat perlantikan bertarikh 11 Ogos 2005, KWAP mengesahkan bahawa tugas firma tuan adalah terhad kepada penyemakan dokumen perjanjian tersebut dan tuan adalah dikehendaki untuk memberi ulasan dari aspek perundangan sahaja. Tugasan yang dikehendaki dari firm guaman tuan tidak termasuk khidmat nasihat mengenai aspek-aspek komersil, percukaian, pengurusan dana pelaburan ataupun kerja-kerja penyelidikan ke atas dana pelaburan swasta yang terdapat di Negara-negara lain. Tugasan kepada firma tuan adalah spesifik kepada aspek perundangan sahaja dan ulasan tuan adalah terhad kepada dokumen-dokumen yang telah dikemukakan kepada firma tuan.

27. The Plaintiff had initially advised KWAP to "seek the advice of a firm of lawyers in the Cayman Islands to advise on the terms of the proposed Agreement". Notwithstanding, KWAP did not do so nor give any express instructions to the Plaintiff to appoint a foreign based consultant. However, in the absence of any express instructions by or approval of KWAP, the Plaintiff allegedly and unilaterally engaged the services of the foreign based consultant, who according to PW1 was not a lawyer. Indeed, PW1 did not know exactly the alleged expert's qualifications or expertise. In fact, he first described him as his partner's (ie, Shaharom's) friend.

(b) It is the contention of learned counsel for the plaintiff that the defence is not maintainable and, in essence, submits as follows:

> In short the Defendant's remedy under the LPA to tax the Plaintiff's bill is extinguished and as a result the plaintiff's bill is final and is payable. All matters raised in the trial thus becomes irrelevant. We reiterate that the decision in *Wee Choo Chin v. Asia Sdn Bhd* (unreported) (upheld by the Court of Appeal on 2.08.2012 was upheld by the Court of Appeal on 2.08.2012 and thus binds this Honourable Court. The facts are similar to the instant case.

And relies on a number of cases namely: (i) *Vije & Co v. The Co-operative Central Bank Ltd* [1991] 2 CLJ 1403; [1991] 4 CLJ (Rep) 188; (ii) *Templer Park Golf & Resort Bhd & Anor v. Tetuan George Varughese* [2010] 8 CLJ 754; (iii) *Adi Radlan & Co v. Create Fortune Enterprise Sdn Bhd* [2010] 4 CLJ 225; (iv) *Harrison and Others v. Tew* [1990] 1 All ER 321; (v) *Wee Choo Chin v. Billion Mayor Asia Sdn Bhd* (unreported) (upheld by the Court of Appeal on 2 August 2012); and (vi) *John Ang & Jega v. Kulasingam Sinatamby* [2001] 2 CLJ 198.

And in conclusion says:

> Accordingly the Defendant has failed to raise any defence to the Plaintiff's claim. Having abandoned their rights to taxation, the Plaintiff's bill is final. The Defendant had not shown special circumstances to this Honourable Court to challenge the bill. None of the matters raised in trial by the Defendant is corroborated with any contemporaneous documents. The matters raised if any at trial is not pleaded. It is trite that this Honourable court will not consider unpleaded facts.

It must be noted here the submission of learned counsel for the plaintiff attempts to brush aside the observation of the Court of Appeal in the instant case. Learned counsel for the defendant in the submission in reply has refuted the plaintiff's submission and I accept the submission of the defendant in all material aspects and find it has merits on the factual matrix of this case. Very importantly, in consequence of the judgment of the Court of Appeal in the instant case which the defendant has attached and, *inter alia*, reads as follows:

...

The dispute between the parties pertains to legal fees of RM1,346,625 (RM1,282,500 + RM64,125) charged by the plaintiff in respect of a draft agreement which the defendant had engaged the plaintiff to vet.

The defendant disputes the legal fees that the plaintiff had charged them on the grounds that the fees are excessive, and, moreover, the Sixth Schedule of the Solicitors' Remuneration Order 2005 does not provide for the charging of fees on a 'percentage' basis or in accordance with so called 'international norms'.

The defendant had required the plaintiff to furnish them with a detailed bill of costs so that the bill could be taxed.

It is not disputed that the plaintiff's bill of costs for a gross sum and for a non contentious matter.

The plaintiff's writ and statement of claim (claiming the sum of RM1,346,625) was filed on 22 August 2006, and we served on the defendant on 22 September 2007.

Before the plaintiff filed the writ action against the defendant, and before the expiration of 3 months from the date of the delivery to the defendant of the plaintiff's (the bill was received by the defendant on 28 June 2006), the defendant, by their solicitors' letter of 12 September 2006, informed the plaintiff that it disagreed with the plaintiff's bill of costs of 27 June 2006. The defendant also informed the plaintiff of their intention to have the same taxed; and they, therefore, required the plaintiff to deliver to them a detailed bill of costs.

The plaintiff however, did not accede to the defendant's request. The plaintiff takes the position that a detailed bill of costs need not be issued to the defendant; the reason being, as contended by the plaintiff, that the fees are for non-contentious matter.

The defendant, on the other hand, submits that notwithstanding that the fees were for a non contentious matter, the plaintiff, nevertheless, was still required to deliver a detailed bill of costs if the defendant were to request for the same. The defendant relies on section 12(1) of the Legal Profession Act 1976('LPA') and section 113(6) of the LPA. Section 121(1) states:

...

A The words '… subject to section 121, …' are significant. In our judgment, by reason of these words in section 113(6) of the LPA, section 121(1) of the LPA is also applicable to non-contentious matters. This was so ruled in *Tetuan Jaafar & Menon v. Senandung Kualiti Sdn Bhd & Anor* [2005] 1 CLJ 234, where James Foong J (as he then was) held:

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> Having considered these propositions, I am of the view that the phrase "subject to s. 121" in s. 113(6) LPA permits the 1st defendant to apply of the bill of costs under s. 121(1)(b) LPA on non-contentious business ascribed under s. 113 LPA. Though s. 121 LPA governs taxation of a bill of costs concerning matters that are contentious and s. 113 LPA relates to non contentious business but with the inclusion of the phase "subject to" in s. 113(6) LPA it means that taxation of non-contentious business ascribed by the order of the Solicitor Costs Committee under s. 113 LPA must be subjected to another provision or procedural limitation for implementation. And the selected provision to facilitate this is s. 121 LPA. This means that for remedy to recover remuneration ascribed by the Solicitor Costs Committee is conditional upon the application of s. 121 LPA.
>
> We are of the view that on the facts of the present case, particularly, the fact that there was a request for a detailed bill by the defendant within the prescribed time frame, and in the light of section 113(6) read with proviso (a) of subsection (1) of section 112 of the LPA, it is a triable issue as to whether or not the plaintiff was legally obliged to furnish the defendant with 'a bill containing detailed items' for the purpose of taxation; and that the gross sum bill is, therefore, now 'of no effect' (see proviso (a)).

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But there is yet another issue. It is common ground that in the present case the Sixth Schedule of the Solicitors' Remuneration Order 2005 applies to the remuneration payable to the plaintiff. Paragraph 2(f) of the Order provides:

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> Remuneration
>
> 2. The remuneration of a solicitor in respect of non-contentious business shall be:
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> (a) …
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> …

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(f) In respect on non-contentious business work for which there are no provision made to regulate the remuneration of a solicitor by means of a scale or fixed fee, the remuneration of the solicitor shall be in accordance with rule 1 of the Sixth Schedule …

Rule 1 of the Sixth Schedule provides:

1. The remuneration of a solicitor in respect of non-contentious work for which no provision is made by mean of a scale or fixed fee shall be such sum as is fair and reasonable having regard to all the circumstances of the case, and in particular the following circumstances:

(a) the of the matter to the clients;

(b) the skill, labour, specialized knowledge and responsibility involved on the part of the solicitor;

(c) the complexity of the matter or the difficulty or novelty of the question raised;

(d) where money or property is involved, the amount or value thereof;

(e) the time expended by the solicitor;

(f) the number and importance of the documents prepared and perused by the solicitor;

(g) the place and the circumstances under which the services or business or any part thereof are rendered or transacted.

In our judgment, it is also a triable issue as to whether or not the bill issued by the plaintiff was in compliance with the Six Schedule of the Solicitors' Remuneration Order.

We so hold for the following reason.

It is to be recalled that the plaintiff's bill of costs was a gross sum bill and not a detailed bill of costs. It was for a total sum of RM1,346,625, made up of RM4,282,500 as fees and RM64,125 as the 5% Goverment tax.

How did the plaintiff arrive at the sum of RM1,282,500?

In their letter of 22 September 2005 to the defendant, the plaintiff informed the defendant that the legal fees (which were inclusive of consultancy research professional fees) that they were charging were 1.5% of the value of the subject-matter of the transaction (USD$30 million, which is equivalent to RM114 million).

A The defendant then by their letter of 2 December 2005 requested the plaintiff to review the fees (of RM1,710,000), as they felt that the fees charged were too high. In response, the plaintiff by letter dated 6 December 2005 stated that their fees were based on 'international norms'. But the plaintiff did not explain as to what they meant by 'international norms'. The plaintiff, however, reduced their bill by 25% (ie, by RM427,500) to RM1,346,625 (inclusive of 5% Government tax of RM64,125).

C Clearly the plaintiff has based their fees on a percentage of the subject-matter of the transaction and also on the so-called 'international norms'.

D In our judgment, since the Sixth Schedule of the Solicitors' Remuneration Orders does not provide for the charging of fees on a percentage basis, and neither does the said Schedule make any reference to any 'international norms', therefore, whether or not the plaintiff's bill is in compliance with the Sixth Schedule of the Solicitors' Remuneration Order, or (as a consequence) whether or not the bill for the purpose of section 124(2) of the LPA E are triable issues.

[Appeal allowed with costs]

(c) In addition, learned counsel for the defendant has meticulously distinguished most of the cases the plaintiff has relied on. It F can be conveniently summarised as follows:

(i) In *Vije & Co v. CCB* - the action by the advocate and solicitor was for a declaration that he was entitled to draw monies from his clients' account in satisfaction of bills which he had sent to the client. The judge found that after G the bills had been raised by the advocate and solicitor against the defendant that 'there is no evidence of the defendant disputing any of these bills on principle or on quantum'. As such, the learned judge held that the defendant could not dispute the bills at 'this late stage'. H No reference was made to ss. 121(1), 113(6) or 124(1) of the LPA 1976. Further, there was no allegation by the client that the solicitor had not complied with the relevant factors enumerated in the Sixth Schedule of the SRO 2005.

I (ii) In *Templer Park Golf & Resort Bhd v. Tetuan George Varughese* - I have pointed out that from the date of the issue of the bills, the client had never disputed them and

it was only one year later when the solicitor presented a winding-up petition that the defendant complained the bill was excessive.

(iii) In *Adi Radlan & Co v. Create Fortune Enterprise Sdn Bhd* - the advocate and solicitor petitioned for his bill in respect of non-contentious work done by his firm before the matter was transferred to another firm. The learned judge recognised that s. 113(6) of the LPA 1976 expressly provided for the taxation of bills of costs in respect of non-contentious business, subject to s. 121 and the Solicitors Remuneration Order 2005.

(iv) In *Harrison & Others v. Tew* - the principle in this case is that a client's remedy under the UK Solicitors Act 1974 is to apply for taxation of the solicitor's bill of costs within 12 months of the bill. This decision did not deal with any provisions equivalent to ss. 121(1), 113(6) and 124(1) of the LPA 1976 and the SRO 2005.

(v) In *Wee Choo Chin v. Billion Mayor Asia Sdn Bhd* - this decision of the High Court and upheld by the Court of Appeal has no reference to ss. 121(1)(a), 113(6) and 124(1) of the LPA 1976.

(vi) In *John Ang & Jega v. Kulasingam Sinatamby* - the learned judge's decision noted that the client therein failed to ask for a detailed bill within the time limit as prescribed in proviso (a) to s. 121(1) of the LPA 1976. In the instant case, that was done but the plaintiff chose not to provide a detailed bill and thereby exposed themselves to the consequences of s. 121(1) of the LPA 1976.

[13] In the case of *Alex Ting Kuang Kuo v. Credit Corporation (M) Sdn Bhd* [2012] 9 CLJ 352, I have made the following observations:

> (g) ... I must say it is unfortunate in the instant case the solicitors have not secured a retainer for agreed fees or given appropriate disclosure as to fees. In some jurisdiction, there is mandatory imposition by statute to provide disclosure as to the estimated costs from the time of the appointment and throughout the costs of retainer to avoid or minimise dispute. I do not see why our legal profession should not be mandated with such obligation for the benefit of solicitors as well as clients to ensure harmonious relationship as well as to arrest taxation of solicitor-client costs in the courts between solicitor and client which in actual fact is a strain on Malaysian taxpayers.

A The observation will equally apply in the instant case.

[14] *En passant*, I must say that I have in *Templer*'s case stated that 'solicitors are a protected species' under the LPA 1976 in relation to fees, provided they follow the provisions of the Act.
B I do not think this will be the case for long because of the Competition Act 2010 which is framed to protect consumer. The protection for clients under the LPA 1976 is not realistic taking into consideration that short time frame is given such as one month for clients to take steps to object to the bill. In addition,
C there are too many provisions in the LPA 1976 for an unscrupulous solicitor to raise unreasonable or excessive bill and justify based on circuitous logic to sustain the bill to the disadvantage of the client, public's purse and judicial time. There is also no provision for compulsory 'fee agreement' on formal basis
D to eliminate dispute. The Bar Council has a duty and obligation to equally protect client's interest. It is time all the stakeholders under the LPA 1976 namely, the Judiciary, the Attorney General's Chambers, the Bar Council and also the Commission under the Competition Act 2010 move to amend the LPA 1976:

E
(a) to provide a just mechanism for fees, taking into consideration the protection to be afforded to consumers under the Competition Act 2010.

(b) to ensure that there are strict guidelines and also compulsory
F provision on formal basis for fees agreement before solicitors engage in client's work.

(c) to establish a tribunal under the LPA 1976 to deal with costs dispute with a right of appeal to the High Court as opposed to the present procedure of originating the dispute mechanism
G in the High Court.

[15] For reasons stated above (except the last paragraph), the plaintiff's claim is dismissed with costs. The plaintiff to pay the defendant costs in the sum of RM75,000. The defendant to pay
H allocatur before the extraction of order for costs, and the Deputy Registrar to issue certificate for the allocatur.

I hereby order so.

I